

Before the
Federal Communications Commission
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Advanced Television Systems and
Their Impact Upon the Existing
Television Broadcast Service

MM Docket No. 87-268

To: The Commission

**Comments of Association of America's Public
Television Stations, Corporation for Public
Broadcasting, and Public Broadcasting Service
on Second Further Notice of Proposed Rulemaking**

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Summary of Argument

Although the Commission has stated repeatedly that it wishes to assure the continued availability of public television service in an ATV world, the Commission has not taken the steps necessary to accomplish that result. Most important, the Commission did not include as one of its allotment objectives the reservation of spectrum for noncommercial use. The net result of this omission is that, if the sample Table were adopted, many reserved NTSC channels would have to be deleted and no ATV channels would be allotted for more than half of the vacant NTSC allotments currently reserved for noncommercial use.

The Commission's failure to make the reservation of channels for noncommercial use a priority that will guide the allotment of ATV channels represents an abrupt departure from the policy towards noncommercial reservations adopted by the Commission forty years ago and consistently followed by the Commission and endorsed by Congress since then. It is also at odds with the ATV allotment policy announced by the Commission itself in the Second Report and Order and recently reiterated in its Third Report and Order.

In deciding whether to adopt its proposal to make ATV allotments primarily, if not exclusively, from the UHF band, the Commission must take into account the effect of such an allotment scheme on noncommercial stations and vacant reserved allotments. In addition to addressing interference and coverage considera-

tions, the Commission must demonstrate that exclusive or primary use of the UHF band will not significantly diminish the number of ATV channels that can be allocated to vacant noncommercial NTSC allotments and existing noncommercial stations.

If the Commission decides to use the UHF band as the exclusive long-term source of ATV allotments, it should not assign any VHF channels to public television stations -- particularly those stations currently operating in the UHF band -- for use during the transition period. Assigning public television stations temporary VHF allotments would materially increase the cost of public television's conversion to ATV, thereby impairing its ability to provide ATV and other services.

Public Television supports the Commission's proposal to allot ATV channels on the basis of current transmitter sites. The benefits of such an allotment scheme can only be realized, however, if those ATV channels are assigned to stations whose current transmitter sites are co-located with the corresponding ATV site. This would not necessarily occur under the proposed first-come, first-served assignment procedure. The Commission should therefore pair all ATV channels with a corresponding NTSC channel in the Table to ensure realization of the full benefits of its site-specific allotment approach as well as the other benefits of paired channels.

Finally, the Commission should (a) preserve short-spaced ATV allotments until ATV channels are reserved for all existing noncommercial stations and all vacant noncommercial allotments;

(b) afford noncommercial applicants an opportunity to apply for vacant paired NTSC and ATV channels; and (c) avoid allotting TV channel 6 for ATV service.

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The Association of America's Public Television Stations ("APTS"), the Corporation for Public Broadcasting ("CPB"), and the Public Broadcasting Service ("PBS") (collectively referred to as "Public Television") submit these comments in response to the Commission's Second Further Notice of Proposed Rulemaking released August 14, 1992 ("Second Further Notice") in the above-captioned proceeding.^{1/}

Public Television is extremely concerned that, although the Commission has stated that it wishes to assure the continued

^{1/} Public Television has actively participated in all phases of this proceeding. Public Television filed Comments on December 20, 1991, Reply Comments on January 21, 1992, a Petition for Clarification or Partial Reconsideration on June 22, 1992, and Comments on July 17, 1992. APTS and PBS have also joined in the Comments filed by the Joint Broadcasters today and in earlier stages of this proceeding, which address issues of common concern to commercial and noncommercial broadcasters.

availability of public television service in an ATV world, it has not taken the steps necessary to accomplish that result. On the contrary, the path on which the Commission has embarked in the Second Further Notice diverges sharply from policies that Congress and the Commission have long recognized are necessary to ensure that the nation's television system is used for educational and cultural purposes, as well as commercial purposes. Those proposals are thus of grave concern to Public Television.

I. The Commission Should Make the Reservation of Spectrum for Noncommercial Educational Use an Allotment Objective.

The Commission proposes in the Second Further Notice four broad allotment objectives to guide the ATV allotment process. Second Further Notice at ¶ 8-21. These principles have been incorporated in the computer program developed by the Commission to generate the sample Table of ATV Allotments, id., ¶ 50, and the Commission has evaluated the success of the sample Table by the degree to which it achieves the four stated allotment objectives. See id., ¶ 52-56.

Unfortunately, the Commission did not include as one of its allotment objectives the reservation of spectrum for noncommercial use even though it has decided in this proceeding to create a noncommercial reserve of ATV channels and has

established policies to protect existing noncommercial allotments.^{2/} This omission has two very evident results.

First, many reserved NTSC channels would have to be deleted if the sample Table were adopted. As shown in Exhibit A attached hereto, 11 vacant NTSC channels that are currently reserved for noncommercial use would have to be deleted because they are co-channel to an ATV channel allotted in the sample Table to the same community of license. This number drastically understates, however, the preclusive effect of the sample Table. Public Television's examination of the sample Table for eleven populous northeastern states reveals that there are numerous instances in which the allotments proposed in the Table would require the deletion of a vacant noncommercial NTSC channel because the ATV channel is co-channel to a reserved NTSC channel and assigned to a nearby community which is too close to permit use of the NTSC channel.^{3/} Public Television's study of the allotments in the sample Table shows that 75% of the vacant noncommercial allotments in these 11 states would have to be deleted if the sample Table were adopted. Although the percentage of precluded channels might be somewhat lower in less congested areas of the country, Public Television nevertheless

^{2/} See, e.g., Second Report and Order/Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340, ¶¶ 36-37 (1992) ("Second Report"); Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rulemaking, released October 16, 1992 ("Third Report"), ¶ 34.

^{3/} See Declaration of David Sillman, Director, Interconnection Engineering, Public Broadcasting Service, attached as Exhibit B.

believes that it is clear that the Commission's failure to incorporate the preservation of reserved channels in its allotment principles would result in a staggering loss of reserved allotments.

Second, no ATV channels have been allotted in the sample Table for more than half of the vacant NTSC allotments currently reserved for noncommercial use. See Second Further Notice, n.60. The Commission nonetheless asserts that the allocation in the sample Table of ATV channels for 170 of the 360 currently vacant noncommercial NTSC allotments reflects the Commission policies for noncommercial stations stated in the Second Report. That is clearly not the case. Indeed, the dereservation of channels and failure to allot channels for more than half of the vacant noncommercial NTSC channels as reflected in the sample Table would sharply diminish the amount of spectrum presently reserved for noncommercial educational use and severely hamper public television's ability to expand both the diversity of services it offers and the geographic scope of public television service.^{4/}

The Commission's failure to make the reservation of channels for noncommercial use an allocations priority as it crafts an ATV allotment scheme represents an abrupt departure from the policy towards noncommercial reservations adopted by the

^{4/} Moreover, the Commission intends to cease issuing new NTSC licenses, including noncommercial NTSC licenses, once it completes the initial assignment of ATV channels. See Second Report, ¶ 51. See also Section VI infra.

Commission forty years ago.^{5/} When the Commission adopted the Sixth Report and Order on Television Assignments, it made the reservation of channels for educational use one of its basic allocation principles, and that commitment to educational broadcasting has been consistently followed by the Commission since then and repeatedly endorsed by Congress in the strongest terms.^{6/} Under that policy, the Commission has provided "all possible encouragement and assistance for the development of educational television" through channel reservations^{7/} and has assiduously protected noncommercial channel reservations in the face of efforts to dereserve them. The Commission has articulated no justification for abandoning this historic policy, which has produced a nationwide system of noncommercial television stations that provide unique and important program services unavailable from commercial outlets.

^{5/} See Sixth Report and Order on Television Assignments, 41 F.C.C. 148 (1952).

^{6/} E.g., Public Broadcasting Act of 1967, Pub. L. No. 90-129, 81 Stat. 365 (1967), S. Rep. No. 22 90th Cong., 1st Sess. 1 (1967), reprinted in 1967 U.S. Code Cong. & Admin. News 1772; Educational Television, S. Rep. No. 67, 87th Cong., 2d Sess. 1 (1961), reprinted in 1962 U.S. Code Cong. & Admin. News 1614; Hearings Before the Committee on Interstate and Foreign Commerce, U.S. Senate, concerning Senate Bill No. 12, 86th Cong., 1st Sess. at 21, 61 (1959); Hearings Before the Committee on Interstate and Foreign Commerce, U.S. Senate, concerning Senate Bill No. 2119, 85th Cong., 2d Sess. at 13, 18 (1958); Hearings Before the Committee on Interstate and Foreign Commerce, U.S. Senate, 83rd Cong., 1st Sess. at 12-14, 26, 45-46, 56-67 (1953).

^{7/} See Channel Assignment in Medford, Oregon, 3 F.C.C.2d 860, recon. denied, 8 R.R.2d 1531 (1966). See also Public Television Comments filed December 20, 1991 at 3-8.

The Commission's failure to make the reservation of channels for noncommercial use an allocations priority is also at odds with the ATV allotment policy announced by the Commission itself just a few months ago, and reiterated in its recently released Third Report. In the Second Report, the Commission stated that it would take into account in spectrum planning the "important role noncommercial educational stations play in providing quality programming to the public and the financial constraints they face in building and running their stations." Second Report, ¶ 36.

In order to preserve public television service and the reserved channels that are its backbone, the Commission adopted the following guidelines to ensure that ATV channels are available for noncommercial use:

We conclude that we will use vacant noncommercial allotments for ATV only where there is no feasible alternative for assigning an ATV channel to an existing broadcaster. Similarly, we will leave vacant noncommercial allotments without an ATV channel pair only when there is no other practicable way to award an existing broadcaster an ATV channel. We will in no event use a vacant VHF channel allotment reserved for noncommercial purposes for commercial ATV. Moreover, only as a last resort will we delete a reserved channel, or use for commercial purposes an ATV channel that would otherwise be paired with a vacant noncommercial allotment, where that channel or allotment would be necessary to provide first noncommercial full-service Grade B coverage to a community. As Public Television suggests, if it is impossible to pair an ATV channel with a vacant noncommercial allotment, we will protect the vacant allotment with both NTSC and ATV separation requirements, provided that ATV spacing is, as anticipated, less than or equal to NTSC spacings.

Second Report, ¶ 37 (footnotes omitted). See also Second Further Notice, ¶ 40. That commitment was reiterated in the Third Report, in which the Commission again recognized "the unique importance of noncommercial stations," and decided that it would create a noncommercial reserve. See Third Report, ¶ 34.

Public Television was gratified by the Commission's strong statement of commitment to the preservation of spectrum for noncommercial use in the Second Report. Unfortunately, that commitment is not reflected in the allotment objectives set forth in the Second Further Notice or in the sample Table of ATV Allotments generated based on those principles. In particular, there is nothing in those allotment objectives -- or, presumably, in the computer program designed to implement them -- that will ensure that ATV channels are reserved for vacant noncommercial NTSC allotments if that can be accomplished without depriving an existing broadcaster of an ATV channel. Nor do those principles reflect the Commission's commitment, as stated in the Second Report, to preserve currently reserved NTSC channels unless deletion of reserved channels is absolutely necessary, as a last resort, to accommodate existing television stations.^{8/}

^{8/} Public Television assumes that this principle will apply to vacant noncommercial allotments as well. Thus, the Commission will delete a vacant NTSC reservation to accommodate an ATV allotment for noncommercial use only where that is the only feasible way in which the Commission can assure that an ATV channel is reserved for noncommercial use in that market or community. In addition, the Commission should specifically reserve that ATV allotment for noncommercial use at the time it creates its initial Table of Allotments.

Furthermore, review of the sample Table reveals that little or no effort has been made to protect existing vacant noncommercial allotments with ATV separation requirements. On the contrary, it appears that the ATV allotments in the sample Table would have a preclusive effect on many vacant channels currently reserved for noncommercial use, particularly in the populous northeastern states. See pages 3-4 supra.

In short, the allotment objectives proposed in the Second Further Notice may ensure that existing broadcasters are fully accommodated, to the extent feasible, but they would do nothing - - as the sample Table graphically demonstrates - - to preserve the spectrum currently reserved for noncommercial use or assure that ATV channels are paired with vacant reserved NTSC channels.

Moreover, there is no evidence in the Second Further Notice that, in preparing the sample Table, the Commission has followed through on its commitment to conduct a case-by-case evaluation of feasible alternatives to both deleting reserved channels and leaving reserved NTSC channels without an ATV channel pair. See Second Further Notice, ¶ 53 and n.60. As discussed above, the Commission stated that it would not delete reserved channels or leave vacant noncommercial allotments without an ATV channel unless there is "no other practicable way to award an existing broadcaster an ATV channel," and that it would conduct a case-by-case evaluation of alternative engineering solutions before reaching that conclusion. See Second Report at n.97. Yet there is no evidence in the Second

Further Notice that such a case-by-case evaluation was in fact undertaken in preparing the sample Table or that such an approach is contemplated. Indeed, the Commission appears disturbingly satisfied that the sample Table meets its "primary objective of full accommodation." See Second Further Notice, ¶ 53.

The fact that no ATV channels are allotted in the sample Table for so many of the currently vacant NTSC noncommercial allotments is all the more startling and disappointing because many of the vacant allotments without ATV channels^{9/} are located in areas of the country where there is abundant spectrum. For example, the sample Table allots only the number of ATV channels as there are stations currently authorized or operating in the communities of Farmington and Silver City, New Mexico, thereby leaving existing reservations for these communities without an ATV channel. Indeed, in Farmington, the sample Table deletes a reserved NTSC channel and reallocates it for ATV. A third community in New Mexico -- Roswell -- has two fewer ATV than NTSC allocations. Considering the largely rural character of New

^{9/} Absent a pairing plan, it is sometimes difficult to establish which vacant noncommercial channels have been left without an ATV channel. We have assumed, for purposes of analyzing the sample Table of Allotments, that in those communities where too few ATV channels have been allocated to accommodate all existing broadcasters and all vacant reserved allotments, the vacant allotments will be left without an ATV channel pair. This assumption seems to be reasonable since existing broadcasters will have priority in applying for the channels, and if they apply for those channels during the initial filing window, there will be no ATV channels left to pair with vacant NTSC reserved channels. See Second Report, ¶¶ 8-10; Third Report, ¶¶ 8-10.

Mexico and the large distances between most population centers in the state, the sample Table's deletion of a reserved channel and failure to allocate a sufficient number of channels to accommodate reserved NTSC noncommercial allotments is inexplicable. There is no apparent engineering reason for leaving so many vacant noncommercial channels without an ATV channel assignment.

In sum, the Commission's failure to include among its allotment criteria the reservation of spectrum for noncommercial educational use is a major departure from forty years of Commission policy -- a policy which has been ratified and reinforced by Congress. Moreover, the proposed allotment criteria do not even implement the Commission's recently stated intent to preserve, to the extent feasible, the spectrum currently reserved for noncommercial educational use. The devastating impact that adoption of the sample Table would have on the future of noncommercial television makes it clear that the Commission must incorporate in its ATV allotment objectives the policies concerning the preservation of channels for noncommercial use articulated in the Second Report.

II. The Commission Must Take Into Account The Effect On Noncommercial Allotments of Making ATV Allotments Exclusively or Primarily From The UHF Band.

The Commission proposes, as its third allotment objective, to make ATV allotments exclusively from the UHF band except to the extent that VHF allotments are necessary to achieve full accommodation of all existing broadcasters. See Second Further Notice, ¶ 18-19, 55. The Commission states that only 17 ATV allotments from the VHF band would be needed to achieve full accommodation of all existing broadcasters and that it should be possible on or prior to the ultimate ATV conversion date to convert those few VHF ATV facilities to UHF operation. Id., ¶ 19.

PBS and APTS have joined in the Joint Broadcaster Comments filed today, which argue, among other things, that the Commission should allot ATV channels from the VHF as well as the UHF band because doing so would minimize interference, replicate service areas and maximize both ATV and NTSC coverage.^{10/} In addition to these general interference and coverage considerations, which affect all stations, the Commission must take into account the effect on noncommercial stations and vacant allotments of making ATV allotments solely or primarily from the UHF band.

The sample Table accommodates less than half of the currently vacant noncommercial NTSC allotments. See id., n.60. While the Commission states that the sample Table demonstrates

^{10/} See Joint Broadcaster Comments, Section V. CPB has not joined in the Joint Broadcaster Comments.

that its goal of full accommodation can be realized using only or primarily the UHF band, this allocation, for whatever reason, falls far short of the need for noncommercial reservations. Given the importance of noncommercial educational reservations to the nation's public television system and the Commission's previous policy determination to allocate ATV channels to noncommercial vacant allotments, the Commission must, at a minimum, demonstrate that exclusive or primary use of the UHF band will not significantly diminish the number of ATV channels that can be allocated to vacant noncommercial NTSC allotments and existing noncommercial stations.^{11/}

III. Noncommercial Licenses Should Not Be Assigned Temporary VHF ATV Allotments.

If the Commission decides to use the UHF band as the exclusive long-term source of ATV allotments and assign VHF channels for ATV use solely during the transition, it should not assign any VHF ATV channels to public television stations -- particularly those public television stations currently operating

^{11/} If the Commission decides to use only UHF spectrum for ATV, it will have to seek an amendment of its appropriation legislation, which prohibits it from diminishing the number of VHF channels reserved for noncommercial educational television stations. See P.L. 102-395, 106 Stat. 1828 (Oct. 6, 1992). The Commission's proposal to require all stations ultimately to convert to operation on UHF channels and relinquish their VHF channels would be inconsistent with the statute.

in the UHF band.^{12/} Assigning public television stations VHF allotments would materially increase the costs of public television's conversion to ATV, thereby impairing its ability to provide ATV and other services.

The conversion of the current NTSC television stations to ATV will be expensive. Many of the cost estimates run on the order of \$1 to \$2 million per station. Most of that cost is associated with the acquisition of an ATV transmitter and associated equipment. As the Commission has recognized, public television stations, which are dependent on taxpayer revenues and charitable contributions, will face substantially greater difficulty in raising those funds than commercial broadcasters.^{13/}

Stations that are assigned VHF allotments during the transition, however, will be required to incur many of those costs twice: once during the initial construction period and a second time when they are required to convert to UHF channels.

^{12/} It appears from Public Television's analysis of the sample Table of Allotments that a significant number of the 17 VHF channels allotted in the sample Table -- as many as 6 of the 17 VHF channels -- would be assigned to noncommercial stations. Three of these channels are assigned to communities that have only one station -- a noncommercial station. Three others are assigned to communities in which the noncommercial station is likely to end up with the VHF channel because it could not compete on an equal footing with the commercial stations in the market for the preferable UHF channels.

^{13/} See, e.g., Third Report, ¶ 28-29.

prior to the final conversion to ATV.^{14/} Public television stations can ill afford this double hit. Moreover, since a large portion of the funding for the ATV facilities of public broadcasters will come from the taxpayers, either through the Public Telecommunications Facilities Program or from state and local legislative appropriations, requiring public television stations to purchase ATV transmission equipment twice would represent a waste of tax revenues.^{15/}

Furthermore, assigning VHF ATV channels to stations currently operating in the UHF band would deprive those stations of whatever economies they might be able to achieve by using their existing NTSC equipment for their ATV facilities. While some UHF stations may be able to use their current NTSC antennas and other equipment for ATV, no such common use of equipment would be feasible if an UHF NTSC station were assigned a VHF ATV

^{14/} Under the Commission's plan, as outlined in the Second Further Notice, those few stations that are assigned ATV channels in the VHF band will be required to convert to ATV operation on UHF channels either before or on the ATV conversion date. See Second Further Notice, ¶ 19. Those stations would thus be forced to purchase ATV transmission equipment utilizing VHF spectrum in order to construct their facilities initially, and later to invest in ATV transmission equipment utilizing UHF spectrum prior to the ultimate conversion deadline.

^{15/} Assuming that the Public Telecommunications Financing Program will continue to bear a substantial -- if not the major -- burden of financing public television's capital improvements, including its transition to ATV, Congress would have to provide between approximately \$35 million and \$50 million per year over a five-year period, or about 2-3 times PTFP's current total budget. This assumes that stations could raise enough capital to be awarded these amounts as matching grants. Allotting VHF ATV channels to public television stations will increase the demands on this program even more.

channel.^{16/} Furthermore, a VHF transmit antenna and connecting auxiliary components will be quite different and substantially larger than a UHF antenna and associated equipment. As a result, the VHF equipment is likely to be incompatible with the configuration and structural capability of a UHF station's tower. Thus, the assignment of an ATV channel from the VHF band to a UHF station is likely to impose substantial additional capital costs on the station.

For these reasons, if the Commission follows through on its proposed plan to require all ATV stations to operate in the UHF band after the transition, it should assure that its channel assignments do not relegate public television stations to one of the few temporary VHF ATV allotments.

^{16/} As a general matter, the farther apart the NTSC and ATV channels assigned to a station are spaced, the less chance there is that the station will be able to use its existing equipment for ATV purposes. For example, ATV and NTSC stations operating on channels within six numbers (36 MHz) of each other will usually be able to use a single broad band transmitting antenna. Use of a single antenna would permit savings in equipment costs and also increase the likelihood that the station will be able to mount the antenna on its existing tower without any additional support. It will also afford savings in leasing additional space on a leased tower for a second antenna. Conversely, assignment of an ATV channel that is spaced more than 36 MHz from its NTSC partner will almost always require the addition of a second antenna. Thus, the Commission should attempt to assign stations ATV channels that are as close to their current NTSC channels as feasible.

IV. The Commission Should Not Undermine Its Site-Specific Allotment Approach By Adopting An Incompatible Assignment Procedure.

Public Television supports the Commission's proposal to allot ATV channels on the basis of current transmitter sites rather than community reference points. See Second Further Notice, ¶ 35. As the Commission and most broadcasters commenting in this proceeding recognize, allotments on the basis of current transmitter sites, as reflected in the sample Table of Allotments, would facilitate efficient spacing of ATV allotments and permit stations to realize cost savings from co-location of their NTSC and ATV transmitting equipment. These cost savings are obviously of great importance to noncommercial stations.

In addition, co-location of transmitter sites will minimize disparities between a station's NTSC and ATV service areas and permit stations to provide ATV service to all viewers within their NTSC coverage areas. This benefit of co-locating ATV and NTSC sites is of particular importance to state public television networks, which typically are required to serve their entire state without regard to the population density of any area. These networks have carefully selected the transmitter sites and power and antenna heights of their stations so that they fulfill this coverage obligation in the most efficient manner with the fewest number of transmitter sites.

Consequently, replication of their current service areas and co-

location of transmitter sites is of vital importance to them.^{17/}

These benefits of allotting ATV channels based on stations' current transmitter sites can only be realized, however, if those ATV channels are assigned to stations whose current transmitter sites are co-located with the corresponding ATV site. That would not necessarily occur if the Commission adopts its proposed first-come, first-served assignment procedure, under which the Commission has proposed to allow stations to apply for any channel allotted to their market. See Second Report, ¶ 37. Under that procedure, a station might apply for an ATV channel in its market that is allotted to a different transmitter site than the one at which it is currently operating. The Commission's proposed first-come, first-served assignment procedure could thus undermine the benefits of its proposed site-specific allotment scheme.

The Commission could try to reconcile this conflict by allowing stations to apply only for those channels allotted to the transmitter site at which the applicant is currently operating. Public Television believes, however, that the better approach would be for the Commission to pair all NTSC and ATV

^{17/} As the Comments of the University of North Carolina indicate, state networks face a tremendous financial burden in transitioning to ATV. Those networks currently consist of multiple stations constructed over a prolonged period of time. With the advent of ATV, they now face the requirement of converting the stations to ATV within a few years. In light of the financial drain of converting to ATV, the Commission should not require them to build ATV stations at new sites in order to continue fulfilling their state-wide coverage mandate.

channels. For those communities in which the Commission proposes to allot only one ATV channel and those communities where it would allot only one ATV channel to each of several different transmitter sites, the Commission has already, in effect, paired NTSC and ATV channels. For example, the communities of New Haven, Connecticut; Ft. Walton Beach, Florida; Greenville, North Carolina; and Utica, New York, to cite just a few examples, all have three or more ATV channels distributed among an equal number of transmitter sites. In other words, in each of these cities, the Commission proposes to assign no more than one ATV channel to any single transmitter site. Thus, assuming that only those stations currently operating at a site are allowed to apply for the ATV channels assigned to that site, the Commission has already paired all ATV and NTSC channels in these communities.

In many other communities, the distribution of ATV channels among several transmitter sites listed in the sample Table of Allotments has taken the Commission a long way towards the pairing of channels. For example, the Commission proposes to allot five ATV channels to four transmitter sites in Montgomery, Alabama, no more than two of which would be allotted to any single site. Similarly, the Commission proposes to allocate five ATV channels to three sites in Flagstaff, Arizona, no more than two of which would be allotted to any single transmitter site.

Thus, the distribution of ATV channels among transmitter sites has already greatly limited the choice of channels that would be available to existing broadcasters -- thereby

diminishing the primary benefit cited by the Commission of a first-come, first-served assignment approach. See Second Report, ¶ 35, n.91. The Commission should go the rest of the way and pair all ATV channels with a corresponding NTSC channel in the Table of Allotments to ensure that the full benefits of paired channels -- which have been acknowledged by virtually the entire broadcast industry -- are realized.^{18/}

V. The Commission Should Not Delete Short-Spaced ATV Allotments Unless ATV Channels Are Preserved For All Noncommercial Stations And Vacant Allotments.

As Public Television has repeatedly noted in its earlier filings,^{19/} noncommercial entities generally do not have the resources to compete effectively with commercial applicants for spectrum and need longer lead time to raise funds than their commercial counterparts. As a result, unless the Commission eliminates the financial qualifications requirement for noncommercial applicants, many noncommercial stations will be unable to secure funding and apply for ATV channels during the

^{18/} The benefits of pairing channels are discussed at length in the Joint Broadcasters' Comments filed December 20, 1991, at 2-11, and the Joint Broadcasters' Comments filed July 17, 1992, at 4-10, and in the Comments filed by Public Television on December 20, 1991 at 11-20 and Public Television's Comments filed July 17, 1992 at 1-10. Public Television intends to address once again in a Petition for Partial Reconsideration of the Commission's Third Report the importance of pairing reserved ATV channels with reserved noncommercial NTSC channels.

^{19/} See Public Television Comments filed December 20, 1991 at 13-14; Public Television Petition for Clarification and Partial Reconsideration filed June 22, 1992 at 8-12; Public Television Comments filed June 17, 1992 at 4-7.

proposed three-year filing window.^{20/} The Commission has acknowledged these facts of life for noncommercial stations in the Third Report. See Third Report, ¶ 28-29.

The Commission proposes in the Second Further Notice to delete all short-spaced ATV allotments that have not been assigned to an eligible broadcaster during the initial filing window. See Second Further Notice, ¶ 32. Since commercial licensees will presumably apply for the fully-spaced channels before they file for the short-spaced ones, it is likely that the short-spaced channels will be the ATV channels available after the window closes. Normally, these are the channels for which public television stations would file if they could not file during the initial three-year window.^{21/} The Commission's proposed deletion of short-spaced ATV allotments, however, will deprive them even of these ATV channels. Such a result is contrary to the Commission's proposal in the Third Report to create a noncommercial reserve for the vacant reserved allotments. See Third Report, ¶ 34.

Accordingly, Public Television urges the Commission not to delete short-spaced ATV allotments unless it has preserved a sufficient number of ATV channels to assure that ATV channels are

^{20/} See id. The Commission decided in the Third Report to lengthen the application window for existing broadcasters from two to three years. See Third Report, ¶ 16.

^{21/} As Public Television has noted previously, the fact that many public television licensees will be relegated to inferior channels is an additional reason why the Commission should pair ATV and NTSC channels.